

# **Joint Legislative Study Committee on the Relationship between the State and the Navajo Nation**

## ***2002 Final Report***

December 12, 2002

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**Joint Legislative Study Committee on the Relationship  
between the State and the Navajo Nation**

**2002  
FINAL REPORT**

***Submitted to the Governor  
The President of the Senate  
The Speaker of the House of Representatives  
Secretary of State  
Director of the Arizona State Library, Archives and Public Records***

**Committee Members:**

**Senator Jack Jackson, Cochair  
Senator Ken Bennett  
Senator Pete Rios  
Senator John Verkamp  
Mr. Derrick Watchman  
Mr. Ron Lee**

**Representative Sylvia Laughter, Cochair  
Representative James Sedillo  
Representative Jake Flake  
Representative Tom O'Halleran  
Mr. Raymond Etcitty**

JACK C. JACKSON  
DISTRICT 3

STATE SENATOR  
FORTY-FIFTH LEGISLATURE

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COMMITTEES:

TRANSPORTATION  
EDUCATION  
GOVERNMENT

## Arizona State Senate

December 12, 2002

The Honorable Jane Dee Hull  
Governor of Arizona  
1700 West Washington  
Phoenix, AZ 85007

The Honorable James Weiers  
Speaker of the House of Representatives  
1700 West Washington  
Phoenix, AZ 85007

The Honorable Randall Gnant  
President of the Senate  
1700 West Washington  
Phoenix, AZ 85007

Ms. Gladys Ann Wells  
Director of Arizona State Library,  
Archives & Public Records  
1700 West Washington  
Phoenix, AZ 85007

As the Chairman of the Joint Legislative Study Committee on the Relationship Between the Navajo Nation and the State of Arizona [established pursuant to Laws 2001, Chapter 24], I am firmly convinced that relations between our two sovereign governments need to be formalized and institutionalized, for the sake of establishing and enhancing intergovernmental relations with the Navajo Nation, and possibly with Arizona's other 20 tribal governments. However, many issues remain to be resolved before any formal tribal-state relations can be established.

The first is *a better understanding of sovereignty*. Tribal sovereignty is misunderstood by many if not most people. A clear definition of sovereignty will help to pave the way for mutual understanding and respect between tribal, state and local governments.

Tribal governments are recognized by both federal and common law as inherent sovereigns; that is to say, tribal sovereignty springs from the tribe itself, and was in existence before the creation of the United States. The fact that tribal sovereignty is limited by federal treaty and/or law does not detract from the inherent right of tribal governments to govern their own peoples and lands, define their own membership, enact and enforce their own laws and to impose certain taxes. On the other hand, local governments such as city and county governments are created governments, which depend on the state for their existence.

Tribal sovereignty, if properly understood, can serve as a foundation for establishing true government-to-government relations.

The next issue is the *need for effective communication between entities of the same level*. For instance, the Navajo Nation Study Committee did not have any representation from the Navajo Nation Legislative Branch, such as the Intergovernmental Relations Committee (IGR). Without meaningful dialogue between decision-makers of the two governments, this or any other study

committee will have no basis for credibility, or any authority to enact any of the recommendations.

Program and/or technical staff are necessary participants in study committees and/or intergovernmental forums and consultations, as they provide vital information for their governments' decision-makers. However, these discussions need the presence of high-level officials, such as state legislators or tribal council members from all entities to be effective.

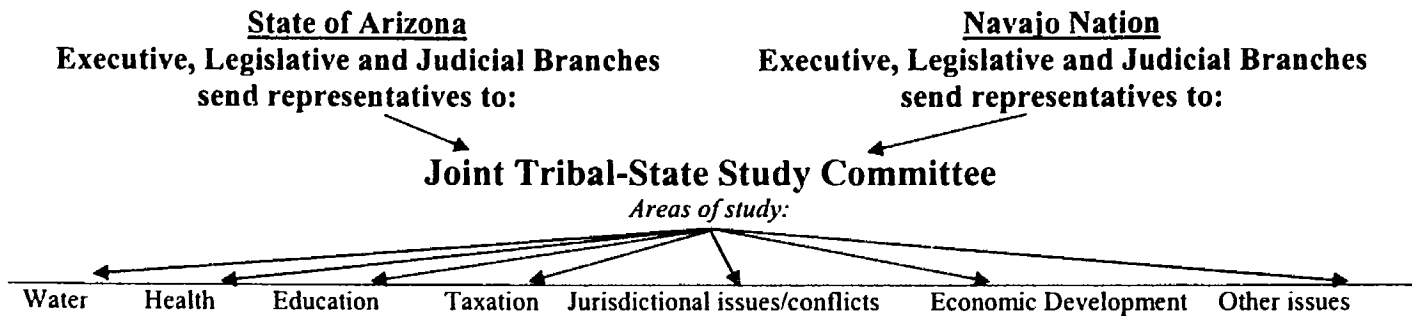
Another issue that has not yet been fully addressed is *the difference in Arizona tribes' cultures, government and people*. Some tribes seek to forge strong relationships with the states in which their communities lie, and enter into a variety of agreements with other governments; however, others are interested only in one or two intergovernmental issues, such as gaming and/or water settlement compacts, and do not wish to have any other contact with the state.

Tribes also differ in governmental structures, cultures and language, which further affects any existing or potential relationship with other governments. Thus, the state needs to be aware of this when dealing with one or more of Arizona's 21 Indian Tribes/Nations. Committees such as this one can serve as a forum for educating non-Indian community members and/or state leaders on the diversity of tribal communities.

The last major issue is *formalizing intergovernmental relationships*. Without a consistent model for formalizing relations, and the will to institutionalize these agreements, whatever work this or subsequent committees performs will go by the wayside with each new administration. By formalizing models for tribal-state relations, with built-in flexibility to adjust to the needs of each tribe, tribal and state governments can be assured of consistent, continuing communication and partnerships.

An ideal forum for constructing and enhancing formalized relations between the State of Arizona and the Navajo Nation would be a new study committee, formed by legislation enacted by both the tribal council and the state legislature. This new committee would consist of representatives from the three branches of both the Navajo Nation and the Arizona State governments, as well as experts and practitioners.

This new committee could be charged with conducting forums on formalizing and institutionalizing the process of tribal-state relationships. The following chart reflects the range of the proposed committee's scope:



The proposed intergovernmental committee, composed of decision-makers, practitioners and community members, would have no lack of issues to study and make recommendations on resolving. These issues include:

- ◆ **Water**—Several of Arizona's Indian Tribes/Nations hold ancient rights to water use from the Gila, Salt and Colorado river watersheds, among other water sources. With the tribes finally regaining use of their share of the state's water resources, there is a great need for intergovernmental cooperation in the areas of water allocations, leases, groundwater recharging, and other related issues.
- ◆ **Health**—Health care for Arizona's tribal members faces many challenges. The Indian Health Service, which provides health care to tribes, is grossly underfunded, which places a huge burden on the state and counties. The Arizona Health Care Cost Containment System (AHCCCS) was established without tribal consultation. The question of state funding of Indian health care was settled only through costly and time-consuming litigation. Although some tribes have taken charge of their own health care systems, funded by P.L. 638 block grants, gaming dollars, and other revenue sources, the outlook for tribal communities is bleak. The tribes and state could use this committee to study means of best utilizing scarce health care dollars to improve the health of tribal members.
- ◆ **Education**—Most Native children attend Arizona public schools. Reservation schools are in dire need of new buildings, facilities and equipment. Many Indian students score very low in standardized tests, and school districts find it very difficult to attract and retain excellent teaching staff. Also, the Navajo Nation being divided up between three states presents a challenge to consistent educational standards and interstate revenue sharing when students pass state borders to attend school. A great opportunity exists for tribal-state partnership in bringing tribal community schools up to par in facilities, education and student achievement.
- ◆ **Taxation**—State taxation of non-Indian owned businesses on tribal land is a big barrier to tribal economic development and self-sufficiency. Since Navajo also assesses a tax, this amounts to double taxation, which leads to a lack of businesses wishing to relocate on Indian land. The state and tribes need a forum in which to resolve this issue.
- ◆ **Jurisdictional issues/conflicts**—Such matters as cross-deputization of police officers, extradition agreements, and certification of tribal police officers could be resolved by enacting intergovernmental agreements that respect the sovereignty of both the tribe and

the state. This committee could craft guidelines for drafting and enacting such agreements.

- ◆ **Economic Development**—Although Arizona had the largest land base (27.7 percent of Arizona is tribal land) and the third Native population (255,879 during the 2000 Census) in the United States, Arizona's Native-owned and/or controlled businesses lag behind the rest of the nation, ranking 10th. Tribal communities represent a vast untapped source for economic development, which benefits the state as a whole, and especially Arizona's rural communities.
- ◆ **Other issues**—The committee could examine other issues as they arise, such as homeland security and anti-terrorism measures on tribal lands. For instance, the Tohono O'odham Nation, which borders Mexico, has seen illegal immigration and drug smuggling rise sharply over the past years. Terrorists could be crossing the border besides undocumented immigrants and drugs. Electric generating stations on or near reservations pose tempting targets for terrorists. Lakes that either lie within or on the border of tribal

lands could also be in danger. Yet, when I proposed that an Arizona National Guard unit be established on Navajo lands, a state policy requiring the Nation to deed the land to the state stopped the effort. The existing state statute is an obstacle to the security and emergency efforts of both the Navajo Nation and the State of Arizona. This committee could lay the framework for changing this statute, ultimately enhancing the security of the entire state.

The committee's final goal would be to build a model for formalized relations between the State of Arizona and the Navajo Nation. This model would include:

- ◆ Policy statement of government-to-government consultation and coordination;
- ◆ The process of constructing intergovernmental consultation policies;
- ◆ Tribal and state responsibilities for implementing and sustaining intergovernmental policies and procedures;
- ◆ Definition of activities for which intergovernmental consultation and coordination will be required;
- ◆ Inclusion of governmental decision-makers in the implementation and enactment of these policies; and
- ◆ The process for resolving disputes arising from consultation, coordination or implementing policies and/or intergovernmental agreements.

The completed policy framework could also serve as a template for implementing formalized intergovernmental relations between the state and other tribes interested in such relations. Even the tribes who wish only limited contact with the state could benefit from clearly-defined guidelines to ease the process of establishing individual agreements.

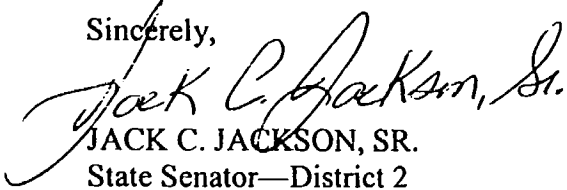
This formalization of relations between the tribes and state is badly needed. This effort will require a lot of hard work and will take some time. However, the result will be better intergovernmental relations, more efficient use of scarce resources, avoidance of expensive litigation, and the betterment of life for Arizona citizens.

Sen Jack C. Jackson, Jr.  
Recommendations to the Joint Legislative Study Committee on the Relationship Between the Navajo Nation and the  
State of Arizona

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I hope our two sovereign governments can reach an agreement and develop a relationship, which  
our children and their children can use as a guide to live by in the future.

Sincerely,

A handwritten signature in cursive script that reads "Jack C. Jackson, Sr." in dark ink.

JACK C. JACKSON, SR.  
State Senator—District 2

cc: Members, Joint Legislative Study Committee on the Relationship Between the Navajo Nation  
and the State of Arizona

## **Joint Legislative Study Committee on the Relationship between the State and the Navajo Nation**

### **MEMBERS:**

Senator Jack Jackson, Cochair  
Senator Ken Bennett  
Senator Pete Rios  
Senator John Verkamp  
Mr. Derrick Watchman  
Mr. Ron Lee

Representative Sylvia Laughter, Cochair  
Representative James Sedillo  
Representative Jake Flake  
Representative Tom O'Halleran  
Mr. Raymond Etcitty

### **MEMBERSHIP:**

**House** Four members of the House of Representatives, not more than two from the same political party and each of whom represent a district containing an Indian Nation or tribe, and one designated as Cochair, appointed by the Speaker of the House of Representatives.

**Senate** Four members of the Senate, not more than two from the same political party and each of whom represent a district containing an Indian Nation or tribe, and one designated as Cochair, appointed by the President of the Senate.

**Other** One member representing Indian tribes, appointed by the Speaker of the House of Representatives.

One member representing Indian tribes, appointed by the President of the Senate.

One member of the Commission on Indian Affairs, appointed by the Governor.

### **ESTABLISHMENT:**

Laws 2001, Chapter 24 created the Joint Legislative Study Committee on the Relationship between the State and the Navajo Nation.

### **COMMITTEE CHARGE:**

The Committee shall (1) review the history of the formation of the Navajo Nation, including the status of the Navajo Nation at the time of statehood; (2) review the legal implications of the citizenship status of Navajo Nation members in relation to their tribe, the United States and this State; (3) review the legal implications of the Navajo Nation's sovereignty, including the issue of taxation and problems that have arisen when there have been differences between the laws or policies of this State, or a county, and the laws



or policies of the Navajo Nation; (4) compile a list of State programs that provide services to tribal residents, including those services provided by the Department of Education and the Arizona Health Care Cost Containment System administration and study the manner in which those agencies coordinate with tribal governments in administering those programs; (5) determine which universities and community college districts provide courses on reservations and determine the manner in which tribal approval for those courses is obtained; and (6) evaluate the possible impact of making the Navajo Nation a separate county. The Committee shall make recommendations on the following: (1) statutory and administrative procedure changes to improve coordination between State, county and tribal governments in providing services to reservation residents; (2) methods to increase partnership efforts between the State, counties and Navajo Nation; (3) other methods to improve relationships between State, county and tribal governments

#### **TERMINATION:**

December 31, 2002

#### **PUBLIC MEETINGS:**

August 9, 2001, Phoenix	Minutes – Attachment A
October 15, 2001, Window Rock	Minutes – Attachment B
June 20, 2002, Phoenix	Minutes – Attachment C
September 5, 2002, Window Rock	Minutes – Attachment D
October 11, 2002, Phoenix	Minutes – Attachment E
November 21, 2002, Phoenix	Minutes – Attachment F

#### **REPORT:**

The Committee is required to submit a written report of its findings and recommendations to the Governor, the President of the Senate and the Speaker of the House of Representatives and provide a copy of the report to the Secretary of State and Director of the Arizona State Library, Archives and Public Records by December 15, 2002.

#### **MEETING SUMMARY:**

*August 9, 2001 – Phoenix*

Raymond Etcitty, Executive Director, Navajo Tax Commission gave a presentation on dual taxation on the Navajo Nation. Mr. Etcitty described "dual taxation" as the multiple taxation of non-members of the Navajo Nation or their businesses by various levels of state and tribal governments. Dual taxation has depressed economic development by discouraging outside businesses from starting up or locating on the reservation. Discussion took place regarding the committee charge.

*October 15, 2001 – Window Rock*

The Committee heard testimony regarding a desire for the State's support in developing a curriculum to ensure that Navajo culture and language are taught in schools as mandated by the Navajo Nation Education Policy of 1984. Testimony also expressed a need for adult vocational training, facilities for the head start program and transportation improvements, including road upgrades and maintenance. Concern was expressed regarding the quality of education and state boundaries, and communication difficulties with the School Facilities Board regarding construction and building renewal funds and problems with the construction formula.

*June 20, 2002 – Phoenix*

Testimony was given expressing concern with language minority students and State standards for Arizona Instrument to Measure Standards (AIMS) and Stanford 9. Concern was also expressed regarding out-of-state Navajo students that attend Arizona schools without reimbursement. Support was requested for the establishment of a State Indian education advisory committee to improve communication between various entities. Apache County officials summarized road improvements by the County on the Navajo Nation. Apache County officials commented on the Navajo Nation's need for public transportation, school transportation, trash disposal and law enforcement.

*September 5, 2002 – Window Rock*

Kelsey Begaye, President of the Navajo Nation, commented on the importance of the treaty of 1868, preservation of the Tribe's culture, tradition and language and preservation of the Tribe's sovereignty. Discussion took place regarding privatization of schools on the Navajo Nation. The Committee discussed issues regarding education and state boundaries. County officials urged the Navajo Nation to open lines of communication to facilitate services provided by the counties. The Committee discussed developing a guiding principle to recommend to the Legislature.

*October 11, 2002 – Phoenix*

The Committee discussed past memorandums of understanding, government-to-government policies and intergovernmental agreements between the State and the Navajo Nation that could be used as models to develop a proclamation or resolution to be followed by possible legislation. The Committee also looked at a Washington State relationship model. The Committee expressed a desire to meet again and make recommendations regarding a relationship model.

*November 21, 2002 – Phoenix*

Dorothy Fulton, Acting Executive Director, Department for the Division of Public Safety for the Navajo Nation and Chief of Police for the Navajo Nation gave a presentation regarding a need for cross deputizing law enforcement agents. Director Fulton also

expressed a desire to share driving under the influence data with the State of Arizona and gain the State's recognition for the police academy in Toyeh. Ron Lee, Arizona Commission on Indian Affairs, gave a presentation on building tribal-state relations and the Arizona Indian Town Hall process. The Committee adopted recommendations.

#### **COMMITTEE RECOMMENDATIONS:**

The Committee:

- Recommended introducing legislation to move the date of the Indian Nations and Tribes Legislative Day to Thursday of the second week of session.
- Recommended introducing legislation to reinstate ARS §41-1108 regarding Indian Nations and Tribes Legislative Day.
- Recommended introducing legislation to establish a study committee to continue efforts to establishing a relationship between the State and all the Native American tribes within the State.
- Adopted the final report.

## ATTACHMENT A

ARIZONA STATE LEGISLATURE  
Forty-fifth Legislature – First Regular Session

**JOINT LEGISLATIVE STUDY COMMITTEE ON THE  
RELATIONSHIP BETWEEN THE STATE AND THE NAVAJO NATION**

Minutes of Meeting  
Thursday, August 9, 2001  
Senate Hearing Room 3 -- 1:00 p.m.

(Tape 1, Side A)

Chairman Jackson called the meeting to order at 1:27 p.m. and attendance was noted by the secretary.

**Members Present**

Senator Ken Bennett	Representative Jake Flake
Mr. Raymond C. Etcitty	Mr. Derrick Watchman
Mr. Ron Lee	Representative Sylvia Laughter, Cochair
Senator Jack Jackson, Cochair	

**Members Absent**

Senator Pete Rios	Representative Norris
Senator John Verkamp	Representative Tom O'Halleran

**Speakers Present**

Derrick Watchman, Chief of Staff, Navajo Nation  
Raymond Etcitty, Executive Director, Navajo Tax Commission  
Lucky Chesley, House Majority Research Analyst  
Peter Zah, Navajo Reservation, representing himself  
Shawn Atakai, Navajo Reservation, representing himself

**Introductions**

At the request of Chairman Jackson, the Members present introduced themselves.

**Review Charge of the Committee**

Chairman Jackson related that when he came to the Legislature in 1984-1985, Burton Barr suggested educating the general public and the Indian Nation so they could work together to accomplish good things for the Navajo Nation. Tribal Legislative Day was implemented, which is now held every year. Also, Indian Days at the Arizona State fair were increased to three days from two and moved toward the weekend from Tuesday and Wednesday. At that time, the plan was to have Indian leaders and Members of the Legislature present. After a few years, however,

the plan began crumbling. He stated that it is now time to do something about the relationship between the Navajo Nation and the State. When appropriations bills are introduced by the Navajo Nation in the amount of \$35 million or more, questions arise about whether the State is responsible for providing funding for the Navajo Nation. He hopes that question and other concerns can be answered by the Committee. He reviewed the charge of the Committee (Attachment 1).

### **Presentation**

Derrick Watchman, Chief of Staff, Navajo Nation, expressed the need for a relationship that not only shares information, but also resources, because there are many unanswered questions from the tribal members and citizens of the State. When a Navajo tribal member requests services from the State, the predominant response is that the Navajo government is sovereign and should be receiving services from the Bureau of Indian Affairs (BIA) and the United States government. He indicated that Mr. Etcitty will give a brief presentation on taxation, which is a very important issue to address in this relationship. He added that in addition to the Committee charges, direction was given from President Begaye to determine policy and legislative recommendations to advance to the Legislature for the upcoming session.

Raymond Etcitty, Executive Director, Navajo Tax Commission, gave a slide presentation on dual taxation (Attachment 2).

### **Discussion**

Chairman Jackson commented that Mr. Etcitty's presentation was very good, but he would like the full Committee present since the idea is to educate Members on issues. He pointed out that Navajo people involved in health, transportation, etc., also have issues and questioned if meetings should be held on the Navajo Nation so those people can address the Committee.

Mr. Etcitty opined that the universities would be the best source for the Committee charge of reviewing the history of the formation of the Navajo Nation including the Navajo Nation status at the time of statehood. Regarding certain problems within the Navajo Nation, he pointed out that the entire Navajo Nation has a few hundred specific problems with the State, which is overwhelming, and questioned if the Committee wishes to choose certain issues to work on.

Following some discussion, Ms. Laughter recommended holding one meeting in each of the three agencies on the Arizona side of the Navajo Nation.

Mr. Flake suggested that the Committee also allow county supervisors, Navajo and non-Navajo, from at least Navajo and Apache Counties, to relate problems and provide solutions to the Committee.

Lucky Chesley, House Majority Research Analyst, advised that the law provides for travel expenses to anyone on the Committee and staff members from the reservation to the Capital and vice versa. Adequate notice is necessary to take care of logistics.

Chairman Jackson indicated that he will speak to the Senate President and Mr. Flake agreed to talk to the House Speaker about encouraging the Members not present to attend the meetings. He

Chairman Jackson stated that as soon as a commitment is made from all of the Members for the next meeting, the Navajo Nation will be notified. He said he would prefer to meet in Window Rock or elsewhere on the Navajo Reservation.

Ms. Laughter recommended that President Begaye's Office send letters to all Navajo Nation Council members advising of the Study Committee, plans to meet on the Navajo Nation, and the importance of preparing information on issues relative to their communities for the meeting. Presentations should be limited to five minutes and handouts should be no more than one page.

Mr. Watchman asked if it would be possible to ask the universities' assistance in reviewing and compiling information that is available nationally. He added that perhaps an inventory could be compiled. Chairman Jackson responded that he will send a letter to the universities asking for assistance.

Mr. Watchman questioned why the legislation speaks to other tribes, but the title of the Committee refers to the Navajo Nation. Chairman Jackson replied that at the time the bill was drafted, the intent was to include all tribes, but Mr. Lee recommended focusing on the Navajo Nation because it is huge and the only treaty tribe in Arizona. Mr. Flake added that with 21 tribes, it would be difficult to resolve issues such as dual taxation, so the intent was to focus on the largest and possibly apply resolutions to the others. Mr. Chesley pointed out that only 4 of the 21 tribes have dual taxation, which he thought was the primary purpose of the Committee and another reason for focusing on the Navajo Nation.

Ms. Laughter noted that the Navajo people are aware of problems, but also need to hear solutions, possibly legislation. She recommended that President Begaye and Mr. Atcitty's Office develop language if they wish to make changes on previous legislation introduced on taxes. She said she is working on language she plans to introduce as well, so they would need to communicate prior to the next meeting. She asked that any language for legislation be sent to the Committee prior to the next meeting so staff can work on it.

Chairman Jackson reiterated the fact that Members will be contacted and everyone notified of the next meeting.

Without objection, the meeting adjourned at 2:34 p.m.

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Linda Taylor, Committee Secretary  
August 10, 2001

(Original minutes, attachments, and tape are on file in the Office of the Chief Clerk.)

## ATTACHMENT B



# **ARIZONA STATE LEGISLATURE**

## **JOINT LEGISLATIVE STUDY COMMITTEE ON THE RELATIONSHIP BETWEEN THE NAVAJO NATION AND THE STATE OF ARIZONA**

### **Minutes of the Meeting**

**October 15, 2001**

**Navajo Nation Museum, Library and Visitor Center  
Window Rock, Arizona**

#### **Members Present:**

Representative Tom O'Halleran  
Representative Jake Flake  
Derrick Watchman  
Ronald Lee  
Raymond C. Etcitty  
Senator Jackson  
Representative Laughter

#### **Members Absent:**

Senator Bennett  
Senator Verkamp  
Representative Deborah Norris  
Senator Rios

#### **Staff:**

Nadine Sapien, Senate Research Analyst  
Larry Chesley, House Research Analyst

The meeting was called to order at 12:30 p.m. by Senator Jackson and attendance was noted.

Senator Jackson opened the meeting by stating there needs to be a relationship between the Navajo Nation and the State of Arizona.

#### **Presentation of Issues**

Eddie Tso, Program Director, Office of Language and Culture, Navajo Nation, stated that the Title 10 education policy was approved on November 14, 1984. The Navajo Nation has a responsibility to oversee education and to encourage lifetime learning. Mr. Tso stated that they are beginning to develop certain education, culture and language standards. They would like the State of Arizona to support the

implementation of the culture and language standards in public schools as mandated by the Navajo Nation Education Policy of 1864. He distributed a handout (Attachment A). The Navajo Nation requires courses in the Navajo language for the special student achievement. They would like the State to support the development of curriculum assessment and materials to ensure the Navajo culture and language are taught in the schools as mandated by the Navajo Nation Education Policy of 1984. He stated that they would like the State of Arizona to support the Navajo Nation's effort to make it a requirement for Navajo students to take courses in native culture, language and history in the public school. They would like the State of Arizona to support and endorse the Navajo Nation's effort to develop textbooks on Navajo culture, language, history, government, citizenship and other native studies. They would also like the State of Arizona to mandate the teaching and learning of Navajo culture, language and native studies.

**Lee Morgan, Department of Headstart,** stated that a Town Hall was held in Phoenix in 1999 and 17 tribes were represented. He stated that young students need to be taught at an early age so relations can be improved.

Representative Flake asked what percentage of Navajo's can read Navajo language. Mr. Tso answered that it is not a large percentage.

Mr. Tso stated that there are textbooks in existence and tape recordings of the language, but the children in grade school are losing their understanding and knowledge of the language and culture. The Navajo tribe is one of the only tribes in the nation that retain their language.

Representative Flake stated that many come to the first grade without knowing any English. This is a problem.

Mr. Tso stated that the President of the Navajo Nation issued an Executive Order mandating that every child be able to speak Navajo.

Representative Flake asked if there has been an analysis of the class time required to teach all of this in the public schools. The answer stated that they have not reached that point. The program is called the Cultural Content Standards and they work with the State Department of Education. Most of the schools are using this particular book.

**Lenora Johnson, Division of Dine Education,** stated that in 1868 the Navajo Nation entered into a treaty with the United States. As a result, the government has some obligations to the Navajo people. In 1924, President Coolidge signed the Indian Citizen Act which granted citizen status to American Indians. In 1934, the Indian Reorganization Act was signed and innovative programs were enacted. In 1947, a major study on the Navajo Nation was conducted. In 1947, the Tribal Council passed a resolution declaring compulsory education for children ages 6 through 16. In 1953, the Navajo Tribal Council established a college scholarship fund. Five years later a

scholarship fund was created which provided \$200,000 for scholarships. Many young people are still applying for these scholarships. In 1969, the Adult Vocational Training Program was passed and funds were used for the indian relocation program and employment training. There is a need for adult vocational training. Many of the children spend up to four hours on the busses to get to school. In 1971, Congress passed the Navajo Community College and provided funds. A handout was presented on this presentation (Attachment B). In 1986, Congress passed various laws such as the anti-drug abuse prevention treatment.

Mrs. Johnson stated that there is an effort by the Navajo Nation to work with the State. However, they do not receive a lot of State monies for many of their programs.

She stated that the Navajo Nation for the past 30 years has been trying to establish a tribal education department. There should be better coordination with the State Legislature.

Representative Laughter stated that the Navajo Nation has done much on their own. Education is a priority. The House of Representatives has a Native American Affairs committee that meets on Thursday. Senator Jackson has an open door policy. They are preparing for legislation to be introduced in January. She recommended that they contact them to express their views.

Representative O'Halleran asked what laws govern the process and how distance learning is working on the reservation.

Mrs. Johnson stated the only advantage is if you have a computer, because there are transportation problems.

Representative O'Halleran said he understood that there are areas without electricity.

Ms. Johnson stated that the transportation problem is being addressed through Proposition 203. There is a definite need for transportation. She stated she was grateful that they came. It is a good start.

Mr. Morgan thanked the Navajo Nation. Head start is an early childhood development program. They are required by regulation to start looking at pregnant women. They are the largest indian program, cover three states and have 932 employees. They are funded to provide services for 4,013 children. However, the problem is getting recognition that early childhood development and education is a degree program. Facilities are also needed. The facilities are being assessed and the majority will be far below the health and safety code standards.

Mr. Morgan continued his testimony stating there are 206 busses that cover over 1 million miles. They have been purchased by the Navajo Nation funds, State of New Mexico appropriation and federal funds. The cost for replacement for this year has

been over \$3 million. They still need to replace 119 busses at the cost of \$35,500 per bus, of which 84 are in the State of Arizona. The roads are unpaved.

Senator Jackson asked Mr. Morgan about the amount of children in the program. Mr. Morgan stated that they have served over 6,000 children, but are only funded for 4,013. Representative Flake asked if each teacher has an assistant. Mr. Morgan stated that the class size varies, not to exceed 20 children with a teacher and an assistant.

Senator Jackson asked if there is an agreement between the Navajo nation and the State. Mr. Morgan stated that the Department of Head Start has agreements with several State entities. One is the nutrition program. All school districts in Arizona are required to provide these services to head start children. The State of Arizona is not living up to their agreement in all areas.

Mr. Flake asked the ages of head start. Mr. Morgan stated three to five.

**Victor Benally, Window Rock Unified School District, Superintendent**, distributed a packet for their information (Attachment C). The state boundary lines were drawn with little or no regard to Native Americans. The Navajo Nation spans the state lines of Arizona, Utah and New Mexico, which creates a problem. They thought the problem would be resolved, but it was not. The Arizona Department of Education developed a formal compact with Utah, but discussions were only started with New Mexico and California. They are requesting assistance to obtain a viable solution to this matter for the constituents. The goal is to reenact Laws 1999 Chapter 99 in the 2002 Legislative Session and seek positive action from the State Department of Education to develop these compacts.

Representative Flake commented that he recognized this problem. This problem will not be resolved unless they disregard state boundaries.

Senator Jackson stated that they will try to reintroduce a bill during the next session for Mr. Benally.

**Gil Arby, Director, Support Services, Window Rock Unified School District**, commented about a letter dated October 12 to Senator Jackson. (Attachment D) Window Rock did not qualify for new construction because of the guidelines. However, they did qualify for the Construction Funding and Building Renewal Funds. The School Facilities Board is trying to get control of the costs of construction. Construction of facilities costs \$120 per square foot. The Board estimates that they will provide only \$78 to \$82 per square foot. The criteria for construction is immediately flawed. The construction period is from March to November which takes away the winter months. The new school is at 7,200 feet elevation. The Board does not allow demolition and waste disposition costs. Demolition costs are over \$1 million. They have buildings that have been deemed by the School Facilities Board as not being conducive to education. There has been a lack of response from the School Facilities

Board. Legislators need to revisit the guidelines and look realistically at construction costs, including demolition costs and hazardous waste costs and the cost for relocation. Square footage costs should be put into a formula. It is very unrealistic. Studies and surveys show that construction costs are \$125 per square foot, which justifies their request. These projects are scheduled to be completed by April, 2002, which needs to be extended by a year. Transportation costs on the reservation are quite significant. The Legislature should revise construction formulas. That was the intent and those issues need to be examined.

Representative Laughter stated that she was a member of a study committee on schools and senior centers and during that time the superintendent was involved. They wrote out the language to address this issue. They met with the superintendents, legislators and Dr. Geiger. They created language to be introduced by the Legislature this past session. It passed through the House Native American Affairs Committee but died in the House Education Committee. She stated that she would like to hold an Education Summit in November. Every organization that is interested should be involved.

**Tr va Ronehorse, Special Ed and Rehab Services, Division of Education,** stated that they do have a very positive working relationship with the State. The State has a responsibility to have a cooperative agreement with all the indian tribes. There is an agreement for the next five years with Arizona to provide vocational rehabilitation for infants and toddlers with disabilities. Arizona is one of the ticket states and the states are being reimbursed for the social security recipients. The tribes would also like to be reimbursed for the costs. They will amend the agreement to include the Rehab Services Administration. A percentage of the revenue from speeding tickets is given to the State of Arizona and set aside for spinal cord and head injury. There is a real need in that area, especially with the senior citizens. She requested support for using a former DES building to set up training for staff and to use as a facility to do vocational and psychological evaluation assessment for their clients. They are looking at all ages of disabilities.

Representative Laughter asked if Ms. Ronehorse would like them to write a letter to Janet Napolitano and Jane Paul with DES. Ms. Ronehorse said yes.

Representative Laughter asked Ms. Ronehorse if they would write a formal letter outlining the specific concerns.

**Rebecca Izzo Manymules, Division of Dine Education, Educational Research and Statistics, Program Manager,** distributed a handout to the Committee (Attachment E). The native student enrollment is 70,000 in 251 schools both on and off the Navajo Nation. She noted that the rest of the information is for their use. She pointed out the math and reading charts.

Kalvin White, Interim Principal Investigator, Navajo Nation Rural Systemic Initiative, asked the Committee to go to page 10 on his handout (Attachment E). The Stanford 9 scores for the Navajo students were in the 50<sup>th</sup> percentile. He requested more data from the State of Arizona. He commented on the handout with further analysis of the data. He expressed the need for assistance from the State.

Representative Laughter asked Mr. White's opinion about the AIMS test. She asked if the Navajo students have the capacity to pass the AIMS test. Mr. White noted that there is a teacher shortage in math and science. He believes that these factors should be noted, but the students are very capable.

Ms. Izzo Manymules stated that the Navajo students have a different way of learning but the language does not keep them from getting a good education. She noted that Native Americans are visual, artistic and talented.

Mr. White again stated that there is no data. They would like this data to become available. Arizona only sends ten percent of the population data to the Navajos.

Representative Flake commented that there is a correlation with learning and the Native language. There are variables that are not being considered. The State can work with the Navajo Nation on reassessing students' learning. This could be applied to other rural communities.

Representative Flake questioned the chart on page 10. Mr. White stated that the line represents the 50<sup>th</sup> percentile. There is no data from non-reservation population. Mr. White stated they needed the census data from the State. There are approximately 17,000 scoring at the 50<sup>th</sup> percentile and above and about 13,000 scoring at the 75<sup>th</sup> percentile and above.

Representative Flake asked what prevents them from getting data. Mr. White stated they have asked for the data. The districts have to consent for the Navajo nation to have access to the data.

Representative Flake asked Mr. White if he would like them to write a letter and he stated yes.

He further asked if there are 70,000 students attending school in 251 different districts. Mr. White answered that there are 12 districts that serve Navajo students and on the reservation there are about 48,000 kids. It is 80,000 if you include the border towns. The data includes the reservations only.

Mr. White said that some of the districts agreed to give them data, but only at the district level.

**Pauline Billi , Navajo Nation North Central Association (NCA) Office** , stated this office was established in 1983. Prior to that, the Navajo Nation had 19 schools accredited through the Arizona NCA in Tucson. An additional 64 schools have been accredited through the Navajo Nation since 1983 with a total of 83 schools at present. There are 29 public schools and 23 grant schools, 2 contract schools and 31 Bureau of Indian Affairs (BIA) schools. There are 60 elementary schools, 5 middle schools, 11 secondary schools, 5 unit schools, 1 adolescent treatment center, and one vocational adult school. These schools have to be engaged actively in some school improvement process. All professional staff hold degrees from accredited institutions and meet the regular certification standards of the State. They are asking for support and for the State Department of Education to allocate funds to assist their office with expenses and school visitations. They also requested three years ago that the Arizona State Department of Education locate a certification field office on the Navajo Nation, but because of the lack of network capability of the Navajo education center, the certification unit and equipment were taken back to Phoenix. It would be helpful if the Department would reconsider setting up the certification unit in Window Rock to help with the backlog of certificates that need to be issued each year.

Senator Jackson asked Ms. Billy if she had ever gone to the State Department of Education to discuss this issue. She replied that Dean McCarey has.

Representative Laughter stated that the Education Summit will include all the educational leaders and will be held in November. She recommended that they get prepared for this summit.

**Joanna Begay, 2001-2002 Miss Navajo Nation**, stated she is 20 years old. She gave a background on her family and performed a vocal solo.

#### **PUBLIC TESTIMONY**

**Phil Stago, White Mountain Apache Tribe**, stated he comes as a citizen of the United States. He commended Senator Jackson. He is very proud of the Committee. He stated that the others who did not come should have been there because it creates animosity. He stated that Phoenix gets most of their water from the reservation. The tribe's worst enemy is the State. However, he wants to go forward to share the resources and environmental issues. He thanked everyone for being there.

Representative Laughter thanked Mr. Stago for coming and encouraged him to get involved in the process. She would like support from all 21 tribes.

**Dr. Lula Stago, Navajo Tribal Member**, stated that she was honored to be before the Committee. She also commended everyone. She agreed that history was being made. She stated that she did not attend school until she was 13. She has a Bachelor of Science degree in teaching and a Masters degree in education. She has been a teacher and principal in a BIA school for 25 years. She commented that it has been a

battle to be effective. She was criticized for not dropping children from the program. She commented on what needs to be done to improve the schools. If you take the language and the culture out of the schools, there is conflict. It is a State and Federal education failure.

Representative Laughter stated the importance of family. Academics is not a priority and we need to go back to basics. The traditional nuclear family needs to be brought back.

Representative Laughter commented that this is what all states face. The United States has not done a good job. It is up to the Committee. Culture and people need to be recognized. The past cannot be changed.

Dr. Stago responded that you cannot just forget about the past and go on. You cannot release prisoners without restoring them. The same is true about the Indian people. Where are the dollars to do this. She is very thankful for the Committee.

#### **Francis Bye spoke in her native tongue.**

A bill was introduced in the Legislature requesting the federal government reconsider relocating Native Americans. Senator Jackson stated that the relocation process is very sad for the Navajo Nation. However, the State of Arizona refuses to participate because it is a federal issue. There is no relationship between the Navajo Nation and the State. The federal government came in and divided the land into two reservations. It was very devastating. He does not know what can be done.

Representative Laughter apologized that the federal government did not come to a resolution with the Navajo Nation on behalf of the elderly in the community and she stated that she was sorry that she was not a legislator at that time. The State Legislature cannot do anything. However, they will look into what they can do with the laws that have already been passed. She will do her best to see what can be done.

**Perry Yazi, Director, Navajo Transit System,** presented a handout (Attachment G). The Navajo Transit System has been operating for 20 years providing public transportation. He commended the Committee. The transit system only serves one town. There is not enough money to do more. The transit system needs to support the border towns also. They are asking for support to change the language and provisions of S.B. 1556 in 2000. He referred to the handout. They want to go forward and have some amendments in January. The Navajo Transit System would like to address utilizing inter-tribal agreements with governmental agencies other than the State. The Transit system asked for assistance from ADOT, but there was no response. The need is not going to diminish.

Mr. Lee asked Mr. Yazi the tribe's position on the piece of legislation that passed in the last two years adding the inter-governmental agreement (IGA) with the federally



recognized tribe to provide financial assistance. Mr. Yazi commented that he was not on board at the time, but they were surprised and concerned. Inter Tribal Council of Arizona (ITCA) supports what they have been presenting.

Mr. Lee asked if a provision in S.B. 1556 provided an extra mechanism for tribes to access dollars through the counties by creating a Memorandum of Understanding (MOU) with them. Mr. Yazi stated they do not support it. It is not working and they cannot access the monies. He referred to the handout.

Mr. Lee further asked if there were better successes before the language was changed? Mr. Yazi stated that tribes could not apply at all, not even to the counties. Now the tribes can apply, but they are still not satisfied with the language.

Mr. Lee asked if each organization has an IGA with the State rather than going through the departments. Mr. Yazi stated they want an IGA or MOU with the State, and not with the Metropolitan Planning Origination (MPO), cities, towns or counties. It lowers the status of indian tribal governments. It affects sovereignty.

Mr. Lee stated that there are many IGA or MOU with cities, towns, and counties throughout the State of Arizona. This legislation allowed those tribes additional leverage to access some resources. It is only for tribes that wish to utilize this alternative to access resources. It does not force them.

Mr. Yazi stated that they do not want to become a part of that. They do not want to go to a county and say this is for transit services.

Senator Jackson asked if they wanted the law amended or a new one. Mr. Yazi stated that they would like to amend it. That is the proposal with ITCA.

Mr. Lee asked if the Hopis had any influence on this legislation. Mr. Yazi answered that yes the Hopis worked directly with Senator Bee.

Mr. Yazi further stated that they did not want to have a conflict with the Hopi tribe.

Larry Chesley stated that it would be best to leave the bill as it is and introduce new language.

Representative Laughter said that they would be accused of introducing legislation for their own people. She stated that she introduces bills for all 21 tribes.

Mr. Yazi stated that the Hopi transit person is no longer with them. The ITCA wants to tie all the areas together.

Senator Jackson assigned the staff to study what happened in 1912 when the territorial government requested statehood. He asked them to look into that and present it at the

next meeting. H stated that there is still a lot to cover. He also would like the definition of their sovereignty. He would like another meeting before the legislative session in January.

There being no further business, the meeting adjourned at 4:30 p.m.

Respectfully submitted,

A handwritten signature in cursive script that reads "Debbie Kennedy". The signature is written in dark ink and is positioned above the printed name and title.

Debbie Kennedy  
Committee Secretary

(Tapes and attachments on file in the Secretary of the Senate's Office/Resource Center, Room 115.)

## ATTACHMENT C

# **ARIZONA STATE LEGISLATURE**

## **JOINT LEGISLATIVE STUDY COMMITTEE ON THE RELATIONSHIP BETWEEN THE STATE AND THE NAVAJO NATION**

**Minutes of the Meeting  
Thursday, June 20, 2002  
3 p.m., Senate Hearing Room 1**

### **Members Present:**

Senator Jack Jackson, Cochair  
Senator Ken Bennett  
Mr. Raymond C. Etcitty

Representative Tom O'Halleran  
Representative James Sedillo  
Mr. Derrick Watchman

### **Members Absent:**

Senator Pete Rios  
Senator John Verkamp  
Mr. Ronald Lee

Representative Sylvia Laughter, Cochair  
Representative Jake Flake

### **Staff:**

Todd Madeksza, Senate Research Analyst  
Natalie Bahill, Senate Research Assistant Analyst

Senator Jackson called the meeting to order at 3:07 p.m. and attendance was taken.

Senator Jackson mentioned that he introduced a bill two years ago to form this Committee for the purpose of steadying the relationship between the Navajo Nation and the State. There are many major issues that need addressing: 1) taxation; 2) sovereignty; and 3) water rights. He stressed that one of his goals is to bring the tribes and State closer through education and he is hopeful that the Committee will be able to design new legislation for next session.

**Gloria Hale-Showalter, Educator from Window Rock**, explained that as an educator she is working with various entities statewide at the elementary and university levels. She stated that she is aware there is a new law regarding English-only for Arizona; however, an Attorney General's opinion indicated that the Native language can continue to be taught in the public schools. Although Native students do take statewide tests, Stanford 9 and Arizona Instrument to Measure Standards (AIMS), language minority children will never really perform to the State's expectations. She asked if there could be an alternative assessment that could be considered to replace Stanford 9. She pointed out that Native students are succeeding. The results of the Stanford 9 does not mean it is an indicator of total student achievement. The Navajo Nation does have a standard the teachers teach. She stressed that the State should recognize that the Navajo Nation has reached out and incorporated the Navajo standards with the State standards.

Ms. Hale-Showalter stressed that they are working toward introducing a formal agreement through legislation with the Navajo Nation and elected State officials. The Navajo Nation is a treaty tribe while the rest of the tribes are Intergovernmental Agreements (IGA) tribes. She emphasized that equity should be foremost in representation, services and funding. She suggested that rural areas are not getting the same attention as the urban areas.

Ms. Hale-Showalter next addressed the school facilities concerns. With Proposition 301, the Navajo Nation felt that all areas of education would be supported.

Senator Bennett questioned if the Navajo Nation has adopted academic standards separate from the State standards. Ms. Hale-Showalter replied that they do not necessarily copy the State. However, they have come a long way in establishing a Navajo language, culture, history and government set of standards. It is a Navajo Nation Tribal Council Education Policy that was established in the early 1980s.

Senator Bennett asked if there is a standard adopted that identifies the expectations for a student to graduate from high school. Ms. Hale-Showalter responded that there are a set of standards that are expected for K-12 students. However, there is no measurable expectation tied to those standards such as the State has in their standards.

Senator Bennett stated that in order to understand why the Native student would never reach the State expectations, would she provide some examples of specific Arizona academic standards that are unreachable or not appropriate for the Native students. Ms. Hale-Showalter replied that the Navajo Nation has accepted the Arizona standards. She pointed out that they have incorporated the Navajo Nation standards into the Arizona standards which is unique to their communities. She said that she is more concerned about how the standards are tested by the State, stressing that the Stanford 9 test was normed by the average Anglo child. She stressed that the test is not valid or reliable for Native or language minority children. These children will never perform at the State's expectation using the Stanford 9.

Senator Bennett requested some examples of the Stanford 9 test questions that are not appropriate for Native American student be provided to the Committee. He said that it is his understanding that norm reference tests such as Stanford 9 are not normed by the average Anglo student. Most of the companies developing these tests indicated that the tests accounted for a myriad of different cultures and backgrounds of students. Ms. Hale-Showalter responded that she would be able to provide that information. She added that the people who administer the tests are aware of the concerns.

Representative Sedillo questioned if she is a consultant or does she work for the Arizona Department of Education (ADE). Ms. Hale-Showalter replied that she is a consultant who works for ADE.

Representative Sedillo inquired as to how many school districts are on the reservation, how many students, and what are the drop-out patterns. Ms. Hale-Showalter answered that she could provide reports that would cover that information. Currently, 85% of the

students attend public schools. There are 11 K-12 schools on or near the Navajo Nation with several smaller charter, Bureau of Indian Affairs (BIA) contract, or tribal schools. She indicated that the data is available on the ADE website and gradeschools.net.

Mr. Watchman asked about how many different jurisdictions the reservation schools report to. Ms. Hale-Showalter replied that there are primarily three jurisdictions: 1) public schools; 2) BIA, and 3) private/parochial entities. The Navajo Nation Government has a tribal education department that has oversight of all the reservation schools. She suggested that the tribal education department, the three jurisdictions, and the State need to come together to refine a legislative agreement.

Mr. Watchman commented that it is confusing as to who has jurisdiction over the Navajo Nation schools and which standards should be followed. He stressed that the Committee should compile additional information regarding that concern.

Senator Jackson wondered if there was any agreement in the 1950s to establish the public school system on the Navajo Nation. Ms. Hale-Showalter replied that the Navajo treaty does stipulate that the federal government will provide education on the reservation. She indicated that there is limited documentation on that issue.

**Alan Begay, Community Liaison, Window Rock Unified School District**, explained that there is a book that provides historical information regarding the Navajo Nation. The public schools were brought on to the reservation at the request of federal employees who did not have a public school for their children. In those days, there were only BIA schools on the reservation and the federal employees' children were not allowed to attend the federally funded schools.

Mr. Begay indicated that the Window Rock Unified School District services five Navajo communities. He stated that there are 110 chapters that are political subunits of the communities, divided into 22 districts. There are five agencies predominately supported by federal government since the 1920s.

Mr. Begay reminded the Committee of two issues that were discussed in October, 2001 that they would like further attention to. The first issue relates to a situation that has been created partially by a Congressional action and historical oversights combined with a number of recent random developments. The original lines for the Navajo Reservation were drawn by treaty with the federal government in 1868. The Window Rock Unified School District boundaries are entirely within the original reservation. The State boundaries were drawn by Congress 44 years later. When Arizona and New Mexico became states, Indians were not considered citizens. At that time, there was some perception that tribes would eventually be assimilated and the reservations would disappear; therefore, the state lines were drawn without regard to the boundaries of the reservation. Housing developments have been built with more regard to reservation land than to state boundaries.

Mr. Begay pointed out that the Window Rock Unified School District enrolls approximately 3,200 students, which includes 273 students (19 of whom are special education students) who live just across the state line in New Mexico. Approximately the same number of Arizona children attend New Mexico schools. The alternative for these children is to ride buses to schools that are much further away. He emphasized that Arizona does not count the 273 children as Arizona residents. The Gallup/McKinley County schools agreed to reimburse monies for these students; however, their preference is enactment of the previous session law that allowed for the State to negotiate compacts in New Mexico. He indicated that two bills were introduced in the last session that addressed these issues but did not pass.

Mr. Begay explained that the Joint Legislative Budget Committee (JLBC) has concerns about the cost involved in accepting out-of-state students. However, the Navajo Nation's experience with the Gallup/McKinley County schools is that the costs are comparable. He pointed out that there has been an administrative resolution proposed to the ADE who will be meeting with the Superintendent of Public Instruction on July 2, 2002, to discuss the administrative actions that might be possible to address this issue. He emphasized that there are at least four other school districts on the Navajo Nation that are in the same situation as Window Rock Unified School District.

Mr. Begay noted that Peterson Zah convinced the four corner states to treat Navajo students as in-state students at any college. This is in statute. He suggested perhaps the same thing could be accomplished for the elementary and secondary students in these four states.

Mr. Begay stated that another concern is the funding by the School Facilities Board (SFB). He said they are thankful for the Students First Program, noting that they have been funded for facilities, renovations and new buildings. Although they remain in line as other schools in the state, they are disappointed that projects are not under construction. There are some schools that are eight or nine months behind schedule. While there has been ground-breaking for some of the sites, projects remain unfinished. He indicated that the concerns extend further than the recent problems of the SFB director. Even though they are concerned about the promptness of the actions within the Students First bureaucracy, this program has the potential to be helpful to the districts that have no assessed valuation. The few taxpayers are still paying a \$9 tax rate for the last bond election several years ago. He said that he hopes the current budget crisis will not hurt the Students First Program.

Mr. Begay commented that they do support the establishment of a state Indian education advisory committee created by legislation. The committee could improve the communication between the various entities involved. A few years ago, a committee was created by the State Board of Education (SBE) that had no staff or funding and had limited access to the power structure of the state and eventually was disbanded.

Mr. Begay stressed that they want the highest quality education programs for their students. He indicated that not all students learn at the same pace. He said that they need the flexibility to develop systems that will affect the growing diversity of the students.

**Roscoe Smith, President, Sawmill Chapter**, discussed the need for the commitments made by the SFB to construct a new school in his community. The chapter government of the Navajo government is the closest a person can get to community life. They deal with the wants and needs at the most basic level but it also includes the future that they might establish an opportunity for the children. Currently, they receive services from Apache County which in the past were difficult to obtain. He stressed that they would like to see an improvement in the relationship between the State and Navajo Nation in order to expedite the SFB goals.

Senator Jackson questioned if the state boundaries were formed in 1868. Mr. Begay replied that the Navajo Nation boundaries were established in 1868; in 1912, the State lines were established. Senator Jackson wondered why the State lines were drawn without consideration of the Navajo Nation boundaries that now are part of our states. Mr. Begay responded that Indians were not considered citizens or able to vote until the 1950s and things were done for the tribes for all those years. He indicated that he did not know what part the Navajo Nation were factors in the negotiations.

Senator Jackson announced that Supervisors Deal, Thompson and Yellowman were not in attendance to cover the health care, education and taxation issues, due to emergency fire conditions in their county.

**Supervisor Tom White, Apache County**, explained that the county started working on the reservation roads five and one-half years ago. The Navajo Nation roads were quite bad at that time. With federal and state funds, they were able to purchase gravel and magnesium chloride for the primitive roads which has helped the transportation needs in that area. He pointed out that Apache County is 16 miles wide and 300 miles long. Their primary responsibility is to maintain school bus routes. There is an IGA between Apache County, Navajo Nation and the Bureau of Indian Affairs.

Supervisor White mentioned the county's mission statement is to maintain county roads, school bus routes and to respond to declared emergencies within fourteen chapters. Funding is received from the Highway User Revenue Funds (HURF) and the Transportation Equity Act of the 21<sup>st</sup> Century (TEA 21). He suggested that there is a communication problem between the Navajo Nation and the State and hoped that the new president of the Navajo Nation will establish a good communication relationship with the State.

Supervisor White next discussed the County's accomplishments and asked for the Committee's help in working together to consider the needs of the Navajo Nation.

Mr. Etcitty wondered if the counties are having difficulty getting right of ways from the Navajo Nation. He said that he understood that some counties are unable to build roads



because of recent federal cases. Supervisor White replied that their county is not having that problem.

Mr. Watchman asked about the relationships between other tribes and counties. Supervisor White replied that Apache County is fortunate because they do maintain many of the roads. He said that he does not think much is being done in the other counties.

In response to Senator Jackson's question, Supervisor White responded that Apache County did have previous problems with the State and the Navajo Nation. Currently, they have maintained an open communication; however, the relationship still needs improvement.

Representative Sedillo asked if the Apache County has worked out an IGA with the Navajo Nation. Supervisor White replied yes, specifically the IGA for maintaining the roads.

Representative Sedillo questioned if they plan to open a gravel pit on the reservation. Supervisor White replied yes.

**Supervisor Joe Shirley, Jr., Apache County Board of Supervisors**, stated that he has three concerns regarding the relationship between the State and Navajo Nation. The first problem is that the Apache County is maintaining over 1,000 miles throughout the Navajo Nation, using approximately \$6 million of heavy equipment. Apache County is the only county that maintains roads. He questioned why the Navajo and Coconino Counties are not maintaining their roads, because they share the same funds. People in other counties have asked Apache County to maintain their roads; however, they are not able to do that. He suggested that the Legislature investigate the situation. He mentioned that many of the funds are fuel taxes generated on the reservation.

Supervisor Shirley pointed out that the second problem concerns excess monies given to Apache County in years past. Two or three years later, the State found the mistake and reduced their budget by approximately \$400,000 for four or five years. Because of that error, they had to cut back on the maintenance of the bus routes. He suggested that if future errors occur, the State should investigate alternatives in remedying the situation so that the county's small budget is not reduced by such large amounts.

Supervisor Shirley next explained the third problem is that the Navajo Nation needs help with public transportation. The Navajo Nation has a transit system; however, it does not have the monies to provide the services it should to all constituents. Many people would like to have public transportation between Phoenix and the Navajo Nation. Perhaps the State could enter into an IGA to assist this situation.

Supervisor Shirley explained that the reservation has a large problem with trash and needs money for trash bins and pick-up trucks. The State could go a long way to assist the Navajo Nation in picking up their own trash.

Supervisor Shirley indicated that the sheriff also needs help. Currently, the sheriff's only duty is to issue traffic tickets. He said that he feels the sheriff could do more. He would like to see an IGA to do cross deputization. The sheriff also needs equipment. The sheriff could also assist with domestic violence and gang issues.

Supervisor Shirley brought up the fact that additional school buses are needed. Because there are not enough buses, many of the children must stand on the bus. The State is liable if any of the children are hurt on these buses.

Supervisor Shirley noted that there should be some flexibility in the HURF rules. He encouraged the Legislature to perhaps rewrite the legislation to allow the County to provide additional services. There are many additional things needed, such as street lights and overpasses for school crossings. Some of the crosswalks are worn and unable to be seen.

Representative Sedillo mentioned that he understands the issues and concerns that have been addressed. He suggested that many Arizona communities, on the reservation and off, are experiencing many problems. He stated that he understands that Flagstaff has agreed to transfer water rights.

Supervisor Shirley explained that Navajo land is considered a foreign country within the United States and the State has not been a help to many of their issues.

Mr. Etcitty pointed out that the Committee's obligation is to review the relationship between the State and Navajo Nation. However, most of the discussions surround the need for additional monies. He asked if the Committee can make recommendations on how to work together.

Supervisor Shirley suggested that perhaps the State could lend money to the Navajo Nation similar to how the federal government lends money to other reservations.

Senator Jackson said that he believes communications between the Navajo Nation and State can be improved.

There being no further business, the meeting was adjourned at 5 p.m.

Respectfully submitted,



Carol Dager  
Committee Secretary

(Tapes and attachments on file in the Secretary of the Senate's Office/Resource Center, Room 115.)

## ATTACHMENT D

**ARIZONA STATE LEGISLATURE**  
**JOINT LEGISLATIVE STUDY COMMITTEE ON THE RELATIONSHIP**  
**BETWEEN THE STATE AND THE NAVAJO NATION**

**Minutes of Meeting**  
**September 5, 2002**  
**President's Conference Room**  
**Office of Navajo Nation**  
**Window Rock, Arizona**

**Members Present:**

Representative Jake Flake  
Representative James Sedillo  
Raymond C. Etcitty  
Ronald Lee  
Derrick Watchman  
Representative Sylvia Laughter, Cochair  
Senator Jack Jackson, Cochair

**Members Absent:**

Senator Ken Bennett  
Senator Pete Rios  
Senator John Verkamp  
Representative Tom O'Halleran

**Staff:**

Carolyn Atwater, Senate Research

The meeting was called to order at 10:05 a.m. by Senator Jackson and attendance was noted. (See attached sheet for additional attendees.)

Senator Jackson commented that, when he introduced the bill creating the Committee, some of the other tribes had expressed an interest in participating. However, he explained that it was decided to confine the Committee to the Navajo Nation since it is the largest tribe in Arizona and the only one affected by a treaty.

**Kelsey A. Begaye, President of the Navajo Nation**, welcomed the members and other attendees to the Navajo Nation. He addressed the treaty of 1868, which he said the Navajo Nation views as a sacred document, and expressed the desire to bring the original treaty back to the Navajo Nation permanently to demonstrate how serious the Tribe is about its treaty obligations. President Begaye also commented on the Long Walk – the forced march of the Navajo Tribe to Ft. Sumner and their ultimate return to

their homeland – as an example of what the Navajo people can accomplish as a united group.

The President mentioned the two guiding principles that play an important part for the Navajo Nation in all of its activities: (1) preservation of the Tribe's culture, tradition and language and (2) preservation of the Tribe's sovereignty. He mentioned some of the successes that the Navajo Nation is realizing, such as the Tribe's operation of the Temporary Assistance for Needy Families (TANF) program and local governance activities. He pointed out, however, that education remains an important issue, particularly when Navajo Nation students are scattered over three states. President Begaye concluded by emphasizing the importance of working through partnerships to achieve goals and the need to move away from the "do it for me" syndrome.

Representative Sedillo asked President Begaye how he perceives the State and the Navajo Nation interfacing on issues such as education, water, law enforcement, fire suppression and domestic relations in order to enable the Navajo Nation to realize more empowerment.

President Begaye suggested the first step is to evaluate the current partnerships to determine where improvements are needed.

**Senator Jay Blanchard** pointed out that education is becoming an even more important issue because of Students First and the more recent lease-to-own legislation governing the construction of new school facilities. He observed that schools built on the Navajo Nation could be owned by a company from another state. Senator Blanchard contended that the Navajo Nation should own the land on which their schools are constructed rather than a company that might be located in another state. He suggested the Navajo Nation will ultimately have to make a determination on how to handle school construction.

President Begaye stated that when the Bush administration came forward with the privatization of schools, the Navajo Nation made it known that it is capable of overseeing its schools. He noted that the Navajo Nation is currently working on setting up a tribal education department, after which many of the educational institutions will come under the auspices of the Navajo Nation.

Mr. Watchman clarified that no one owns tribal land and that even with privatization the underlying leases would still be enforced. However, he pointed out that there are concerns about whether valid leases are in place for many school facilities. He added that privatization and how Indian land is used will be major issues if the State decides to move in that direction.

**Dr. Peter Belletto, Superintendent, Ganado Unified School District**, contended that privatization is not the answer. He said he supports the development of a tribal education department and a Navajo Nation education system that is equal to or better than the public and private school systems, adding that highly trained educators and administrators are available on the Navajo Nation to accomplish that goal. Dr. Belletto

explained that his school district uses the western curriculum within a traditional Navajo learning model, and he emphasized the importance of teaching both English and the Navajo language in school.

**Representative Albert Tom** commented on the number of complaints he has received from his Navajo constituency who have not received their TANF payments in a timely manner.

President Begaye responded that the August checks have been processed with a note to the recipients apologizing for the late arrival and assuring them that the Navajo Nation is working to improve the system. He explained that the Council recently appropriated funds for a financial institution management system that should alleviate the problem.

Mr. Watchman listed various services on the blackboard and the governmental entities responsible for providing those services. He noted there is ambiguity in the roles that the Navajo Nation, the State, the counties and the Bureau of Indian Affairs each play in the provision of services such as taxation, education, transportation and roads and the TANF program.

**Dr. Deborah Dennison, Superintendent, Window Rock Unified School District**, pointed out that education is a prime example of how state boundaries affect the Navajo Nation. She explained that the Window Rock Unified School District serves 273 students from New Mexico and that, with different requirements from both states, it is unclear whether the district is following correct procedures in the counting of these students. Dr. Dennison further explained that it becomes a hardship for the district if federal impact aid funds for these students go to New Mexico, and she indicated the need for an intergovernmental agreement (IGA) between the State and the Navajo Nation to alleviate the situation.

Senator Blanchard expressed concern that the district is probably losing over one million dollars in impact aid funding.

Senator Jackson pointed out that legislation was passed a few years ago dealing with this particular situation but it has not been extended. He introduced a bill this past legislative session to accomplish that, but the bill was stopped in the process because he was told that the problem could be handled administratively.

Senator Blanchard observed that the State fully funds charter school students where the money follows the student, and the State should be able to do the same for the Navajo Nation students.

Representative Tom suggested that, since Arizona and New Mexico share common concerns, it would be advantageous to meet with officials from New Mexico to attempt to resolve issues such as overlapping boundaries.

Mr. Lee recommended that an IGA between the Navajo Nation and the State use the Commission of Indian Affairs at a greater level, particularly working towards the development of a Navajo Nation legislative office representing the Tribe's interest at the state level similar to the national level.

**Percy Deal, Navajo County Board of Supervisors**, stated that a number of years ago the Navajo Nation lost out on an opportunity to participate in the establishment of the Northland Pioneer Community College with the White Mountain Apache Tribe and the Hopi Tribe because he said the Navajo Nation felt that its sovereignty was being threatened by the county. Mr. Deal contended that the two smaller tribes used sovereignty to enhance their educational opportunities, and he encouraged the Navajo Nation to use sovereignty as a tool to bring services to its people.

Representative Tom asked Dr. Dennison what changes she believes are needed to address the school boundary problems. Dr. Dennison contended that the situation should be handled legislatively with language specifically relating to the needs of the Navajo Nation students.

Representative Tom suggested legislative staff could research how the issue can be resolved, adding that he would be happy to sponsor or cosponsor appropriate legislation.

**Jesse Thompson, Navajo County Board of Supervisors**, said the county has had a good relationship with the Navajo Nation, the Apache Tribe and the Hopi Tribe and suggested that these discussions would heighten that relationship and the relationship with the State.

Mr. Thompson emphasized the need for the Navajo Nation to accelerate its authorization process so the county can provide local services as quickly as possible. He also expressed concern about unfunded mandates. He explained that the State took back operation of the Arizona Health Care Cost Containment System program but required the county to pay for restoration of competency, which amounts to a sizeable cut in the county budget.

Mr. Deal remarked that another area of concern is law enforcement, and he encouraged the return of cross deputation of federal, state and county officers to aid tribal officers on the Navajo Nation. He also urged the Navajo Nation to streamline its approval process for services provided by the county.

Mr. Etcitty pointed out that the various governmental entities providing services all have different standards and funding sources and all must comply with different internal requirements. He addressed the Section 164 approval process that applies to nearly all activities on the Navajo Nation. He explained that, because of past allegations of abuses of power, the approval process was made more bureaucratic in order to make it more difficult for illegalities to occur.

**Tom White, Apache County Board of Supervisors**, suggested that the Northern Arizona Council of Governments (NACOG) should be included in a discussion of service providers, and he recommended that the Navajo Nation become more involved in NACOG and the services and grants it can provide.

Representative Sedillo asked if the communication aspect of law enforcement is an issue with Navajo County. He noted that the recent fires have exemplified the issue and he suggested the need to work on a statewide communication system. Mr. Thompson agreed that all law enforcement entities need to know how they can support each other, particularly in emergency situations. Representative Sedillo contended that law enforcement and emergency services need to be coordinated on and off the reservation, and he recommended that the various entities come together to address the issue.

Dr. Belletto commented on successes that have been achieved by working together with other entities, such as establishing an Apache County library in the high school in his district and establishing cell power communication in Ganado. He agreed that communication and law enforcement are critical issues, particularly cross deputation and the sharing of information.

Representative Tom addressed the increased rate of juvenile delinquency on the Navajo Nation and the limited educational services being provided for juveniles in the court system.

**Peterson Zah, Advisor to the President on American Indian Affairs**, advocated the need for a guiding principle or statement from the Navajo Nation to the State and vice versa in terms of how the two entities can work together. He compared such a guiding principle to the Constitution. Mr. Zah suggested looking at other states, such as Oklahoma, Minnesota, Wisconsin, New York and the Dakotas. He explained that the tribes lived on the land first and others came and created states without defining their relationship with the people already there. Mr. Zah pointed out that when he came into office in 1983 he entered into IGAs with the Governors of Arizona, New Mexico and Utah that attempted to alleviate disputes among the entities, which represented a beginning in this type of process.

Mr. Lee addressed Indian Nations Legislative Day, which will be held January 16, 2003 at the Legislature and which was established to provide a forum for the tribes to meet with state legislators. He expressed concern that since its inception a few years ago the event has lost its focus, but he pointed out that a measure passed in the last legislative session turns the responsibility for the event over to the Arizona Commission of Indian Affairs. He urged the Navajo Nation to become involved and utilize the Commission to prepare for Indian Nations Legislative Day.

Representative Flake commented on the improvements that have been made over the years on the Navajo Nation in areas such as education, roads and communication. He noted, however, that there are still many unanswered questions as to the relationship



between the State and the Navajo Nation and who is responsible for what in that relationship.

Mr. Lee questioned whether the Committee should begin to develop a guiding principle to recommend to the State Legislature.

Senator Blanchard suggested a starting point might be to examine the relationships existing between other Native American nations and their respective states.

Mr. Deal suggested reviewing the IGA mentioned by Mr. Zah to determine if it is applicable to the issues under discussion and modify it to serve as the guiding principle. He pointed out that the document has no enforcement elements but he wondered if there should be some legislative force behind it. Mr. Deal emphasized, however, that some issues cannot wait to be addressed while a guiding principle is adopted.

Dr. Dennison invited those present to attend a forum on education reform at the Window Rock Unified School District on October 24. Dr. Belletto extended an invitation to the Ganado Unified School District, which is hosting a Unity Day on September 11.

Senator Jackson pointed out that the Committee statutorily expires on December 31, 2002.

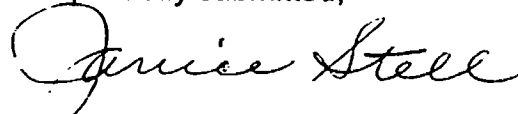
Mr. Etcitty contended that any type of agreement between the State and the Navajo Nation can be accomplished both administratively and legislatively. He pointed out, however, the need for a continuing entity to monitor this process, perhaps a formal office funded equally by the Navajo Nation and the State to coordinate legislation.

Senator Jackson suggested the Committee meet again to consider the ideas that have been expressed on how to establish a relationship and asked the members to contemplate how best to proceed. He asked Mr. Lee to host the meeting in Phoenix.

Mr. Deal recommended that the Navajo Nation be placed on the agenda for the Indian Nations Legislative Day to present pertinent background information.

The meeting adjourned at 12:30 p.m.

Respectfully submitted,



Janice Stell  
Committee Secretary

(Tapes and attachments on file in the Secretary of the Senate's Office/Resource Center, Room 115.)

Date: 9/5/02  
Time: 10:00 a.m.

## MEETING OF COMMITTEE ON

[illegible]

## ATTACHMENT E

# **ARIZONA STATE LEGISLATURE**

## **JOINT LEGISLATIVE STUDY COMMITTEE ON THE RELATIONSHIP BETWEEN THE STATE AND THE NAVAJO NATION**

**Minutes of the Meeting  
October 11, 2002  
9:00 a.m. Senate Hearing Room 1**

### **Members Present:**

Senator Jack Jackson, Cochair  
Senator Pete Rios

Representative James Sedillo  
Mr. Derrick Watchman  
Mr. Ron Lee

### **Members Absent:**

Senator Ken Bennett  
Senator John Verkamp

Representative Sylvia Laughter, Cochair  
Representative Jake Flake  
Representative Tom O'Halleran  
Mr. Rayrond C. Etcitty

### **Staff:**

Nadine Sapien, Senate Research Analyst

Senator Jackson called the meeting to order at 9:10 a.m. and attendance was noted. For additional attendees, see Sign-in Sheet (Attachment A).

Senator Jackson announced that a quorum was not present and therefore the Committee could not take any formal action, but that testimony would be heard.

### **Discussion Regarding 1991 Memorandum of Understanding between the State of Arizona and the Navajo Nation -- Ron Lee, Arizona Commission on Indian Affairs (ACIA)**

Mr. Lee stated that at the last meeting in Window Rock, Mr. Peterson Zah, a respected leader and previous President of the Navajo Nation, suggested that the Committee establish a set of principles or a set policy that could be presented to the Legislature in document form. Mr. Lee stated that a similar intergovernmental agreement had been created in 1992 between the Navajo Nation and the States of New Mexico, Arizona and Utah in an attempt to formulize relationships between the Navajo Nation and these states. He remarked that it was intended that the agreement was to be a "living document" where future leaders would expand it as necessary to address environmental and political changes as well as current issues and needs of the people. He distributed a handout which included the Statement of Government-to-Government Policy, 1992; the proclamation: State/Tribal Governmental Relations policy, 1991 and the Memorandum of Understanding between the Navajo Nation, the State of Utah and its subdivision, San Juan County, May, 1996 (Attachment B). He remarked that these documents could be used as boilerplates for documents created by this Committee.

Mr. Lee also distributed handouts from the Governor's Office of Indian Affairs, Washington State regarding the Centennial Accord between the Federally Recognized Indian Tribes in Washington State and the State of Washington; Washington State/Tribal Government-to-Government Implementation Guidelines and Institutionalizing the Government-to-Government Relationship in Preparation for the new Millennium (Attachments C, D and E). He remarked that during the late 1980s, the State of Washington wanted to formalize its relationship with the Tribes within their State. He stated that this Committee could use the guiding principles within these documents to create documents for the State of Arizona and the Navajo Nation. He stated that in 1999, Washington State released a report of a study entitled The Challenges to Relations between the State of Washington and Washington Tribes, which included input from tribal leaders, state and county officials, agency administrators and other organizations within the State (Attachment F).

Mr. Lee commented that by using these documents, the Committee could create a proclamation or resolution and develop legislation for the upcoming legislative session to continue an ad hoc committee and perhaps advocate funding for a similar report. He stated that the ACIA and the committee could work towards developing an accord between the State of Arizona and the Navajo Nation.

Senator Jackson asked if the agreement between the State of Washington and the Tribes of the State was included in state statute. Mr. Lee stated that it was not.

Senator Jackson opined it was Mr. Zah's term in office as well as the Governor's, that dictated the extent of the agreement made in the Statement of Government-to-Government Policy, 1992 and the proclamation: State/Tribal Governmental Relations Policy, 1991. He remarked that there was also a critical issue regarding the lack of water resources for many communities at that time. He opined that creating a document that can be used as a "living document" as well as be included in state statute would be beneficial. He stated that the current gaming situation being addressed with Propositions 200, 201 and 202 might not have been necessary if an understanding had already been in place.

Senator Rios asked if the dispute resolution in the sample form from Washington State is government-to-government in terms of policy or individual situations. Mr. Lee remarked that there are several ways that policies could be established, for example either through the court system or legislative measures. He stated that either this Committee, the Commission on Indian Affairs or some other entity could provide a forum for dispute resolutions as a first point of contact to resolve disputes before they end up in court. He stated that recently the Tribes have seen their sovereignty being threatened by unfriendly court systems. He opined that this issue could be resolved with a well-defined resolution regarding the intent of whatever entity is created or used for this purpose.

Mr. Watchman commented that creating continuity is important, whether by statute or another means. He stated that issues that often come up between the State and the Tribes are centered on the lack of familiarity between the two entities and an understanding of the different processes. For example, the Navajo Signature Review Process and the State process are not fully understood and therefore create more misunderstandings. He agreed with Senator Jackson's comments regarding the current issue of Indian gaming. He noted that there appears to be confusion regarding what life is like on reservations, which has caused false impressions of the benefits of Indian gaming and what it has accomplished. He remarked that documents and agreements tend to fall by the wayside with administration or leadership changes. He suggested that other state models should be reviewed.

Mr. Watchman asked if the Washington State Office of Indian Affairs was involved with the process and if it was still effective. Mr. Lee stated that the Washington State Legislature uses their Office of Indian Affairs more than what Arizona currently does. Additionally, Washington State backs the agency office with funding and supports other activities, such as developing an accord on behalf of the State and the Tribes. He opined that the Arizona Commission of Indian Affairs has not been used quite as extensively and that there is a great opportunity to use the agency to foster a better relationship between the State and all the tribes. He stated that it would be a large undertaking and with the current staff, his agency would prefer to develop a model with only the Navajo Nation. He stated that once this is accomplished, the model could be used with all the remaining tribes that wish to establish a relationship with the State. He opined that it would be a mistake for the Legislature to assume that all 21 Arizona tribes want to establish a formal relationship. He stated that perhaps in the future after the gaming issue has been addressed, more tribes may want to explore this avenue.

Representative Sedillo remarked that two other issues of concern that were brought up at the last meeting were law enforcement and fire protection. He stated that these issues are very important, especially for the rural areas of the State and rural reservations. He noted that any documents or suggestions that are developed by this Committee needs to encompass the full range of services needed as well as the continuation of recognition of the sovereignty of the entities involved.

Mr. Watchman commented that there appears to be two tracks that the Committee needs to consider. He stated that one track is that there is a responsibility for both governments to provide services to the Navajo people on the reservation, which presents many different obstacles, such as jurisdiction, accumulation of resources, and stream-lining an effective system. He stated the second track is how to get both sovereign entities to work together in tandem. He noted that in the Washington State example the term "recognition and respect for each sovereign" is used. He stated that he was not sure if the State and the Navajo Nation are at this point as yet. He remarked that the true track that needs to be reviewed is how to improve the relationship between the State and the Navajo Nation so that understanding between the two entities can be established, as well as the daily responsibility of the State Legislature and the Navajo elected officials to provide services. He noted his concern of the budget problems of

the upcoming legislative session and how it will affect the services that are provided to the tribes.

Senator Jackson commented that another issue of concern is security from terrorist activities. He stated that in a meeting with Representative Sedillo and members of the National Guard, jurisdictional problems and land acquisition were discussed regarding establishing one or two additional National Guard units on the reservations. He stated that this issue needs to be addressed as well. He opined that the State and the tribes need to find some way to be able to live together and not take every issue into the courts to be solved.

Representative Sedillo remarked that during the last two years, the issue has been debated on the development of a veteran's cemetery in northern Arizona, particularly the area that is impacted by the four sacred mountains. He stated that this issue should also be included within the document. He suggested that Mr. Lee and the ACIA develop an accord in regards to developing a "living document" in order to proceed with the Committee's recommendation that it be adopted in the next legislative session.

Mr. Lee commented that he would like to be involved with Senator Jackson in formalizing a relationship between the Navajo Nation and the State government by creating a memorandum or policy to be drafted into proposed legislation, provided that he remains in his current position. He opined that this proposed legislation with suggestions of how to develop an accord, will encourage further debate and participation and may bring additional suggestions from other entities for the Legislature to review. He opined that this would be the first of many steps needed to refine the memorandum or policy to develop the principles needed for formalizing a relationship.

Senator Rios asked if Mr. Lee and staff would be drafting an accord or a resolution to continue with this effort and attempt to obtain some funding for purposes of developing an accord. He stated that he agreed with all the points that have been made and noted that mutual respect amongst and between the sovereigns does not currently exist. He opined that this Legislature views Indian land and reservations as an integral part of the State of Arizona, but as a subordinate part of the State. He stated that if this is the mentality that the Committee is going to be dealing with, it will be difficult to get any legislation approved from an accord. He opined that taking smaller steps, such as getting a continuance of the current committee would give a greater opportunity for success.

Representative Sedillo stated that his suggestion was for the creation of a process in regard to the development of an accord.

Senator Jackson remarked that not only does the relationship between the State and the Navajo Nation need improvement, but also the relationships of the counties, cities and towns and the Navajo Nation. He asked for recommendations or suggestions from the Committee members on how to proceed to address all the concerns mentioned.

Mr. Watchman stated that the lack of understanding from the State, which includes the counties, cities and towns, impact the Navajo Nation in regards to mutual partnerships in providing resources needs to be addressed. He stated that last year, as an official of the Navajo Nation requesting services for citizens of the State, he approached the House of Representatives and it was quickly recommended to him that he should be going through the Bureau of Indian Affairs. He suggested an outline of the existing relationship of the State and the Navajo Nation would be helpful in defining the current relationship and identifying areas in need of improvement.

Senator Jackson asked if Mr. Lee's office has any of this information. Mr. Lee noted that his office has already done some work in this area in terms of looking at some of the intergovernmental agreements that have been entered into with state through state agencies such as the Department of Transportation, the Department of Economic Security and the Department of Environmental Quality. He stated that his office could research this further and will provide this information at the next meeting. He stated that an example of the relationship between the State and the Navajo Nation is the compact signed in 1999 with the sharing of the transaction privilege tax to fund the Dine College for infrastructure.

Senator Rios stated that he envisions the Committee making a recommendation for supporting an accord that includes a historical perspective of the relationship between Indian land and the State of Arizona including other political subdivisions of the State. He noted that because of the importance of water issues, fire protection issues, law enforcement and homeland security issues, it is incumbent upon the State to develop some kind of an accord with the Indian Nations, starting with the Navajo Nation. He stated that after the recommendation is accomplished, a bill could follow based on the recommendation, which could be modeled after the State of Washington, where the Director of the Indian Commission could develop the accord. Additionally, the Washington State document has language that states "the parties recognize that their relationship will successfully address issues of mutual concern," which could be developed under those four points. He noted that with proposed legislation to put the accord into place, it would force the State to enter into this kind of agreement.

Senator Jackson stated that there might not be enough time to develop the accord prior to session beginning. He stated that legislation could be introduced to request to extend the Committee for another year or two.

Representative Sedillo commented that it is imperative that the Committee meet as soon as possible to begin the process that has been outlined by Senator Rios.

Mr. Lee commented that establishing dialogue with the Navajo and other tribes within the State is an important goal. He noted that the State of Arizona has several forums that provide opportunities to work and interact with the tribes, such as the Indian Nations Legislative Day and the Arizona Indian Town Hall meetings this year. He suggested utilizing these forums to introduce these ideas for the accord with the intent of introducing it as legislation in the next legislative session.



Mr. Watchman remarked that the Committee report could include the recommendation to extend the Committee for another year, which would allow the Committee to continue to work. He agreed that this process will not be accomplished overnight and noted that it is important to obtain an acknowledgment between the two parties that the effort is being made to improve the current relationship.

Senator Jackson asked Mr. Lee to research the current status of the relationship between the State and the Nation as well as list areas that need improvement for the next meeting. He noted that the Committee's final report would need to include a request to continue the Committee for another year as well as Committee recommendations. He announced that the next meeting would be held on Thursday, November 21, 2002 at 10:00 a.m.

Without objection, the meeting was adjourned at 10:15 a.m.

Respectfully submitted,

A handwritten signature in cursive script that reads "Tracey Moulton".

Tracey Moulton  
Committee Secretary

(Tapes and attachments on file in the Secretary of the Senate's Office/Resource Center, Room 115.)

## ATTACHMENT F

# **ARIZONA STATE LEGISLATURE**

## **JOINT LEGISLATIVE STUDY COMMITTEE ON THE RELATIONSHIP BETWEEN THE STATE AND THE NAVAJO NATION**

### **Minutes of the Meeting**

**November 21, 2002**

**10:00 a.m. Senate Hearing Room 109**

#### **Members Present:**

Senator Jack Jackson, Cochair  
Senator Ken Bennett  
Senator Pete Rios  
Mr. Ron Lee

Representative Sylvia Laughter, Cochair  
Representative Tom O'Halleran  
Mr. Raymond C. Etcitty  
Mr. Derrick Watchman

#### **Members Absent:**

Senator John Verkamp  
Representative James Sedillo

Representative Jake Flake

#### **Staff:**

Nadine Sapien, Senate Research Analyst  
Dallas Gold, Senate Assistant Research Analyst

Senator Jackson called the meeting to order at 11:00 a.m. and attendance was noted. For additional attendees, see Sign-in Sheet (Attachment A).

### **OPENING REMARKS**

Senator Jackson opined that a formal relationship between the State and the Navajo Nation, as well as with all of the tribes within the State is needed to create guidelines to deal with critical issues such as the decline of water and other natural resources. He stated that formalizing the relationship between the State and the Navajo Nation would be a benefit for both entities.

### **PRESENTATION ON CROSS DEPUTIZING LAW ENFORCEMENT AGENTS**

Dorothy Fulton, Acting Executive Director, Department for the Division of Public Safety for the Navajo Nation and Chief of Police for the Navajo Nation, commented that during the last few years she has been advocating on behalf of Navajo Nation Law Enforcement and Navajo Nation Public Safety Programs with both New Mexico and Arizona. She remarked that Division of Public Safety for the Navajo Nation is currently working on various issues with counties in New Mexico and Arizona. She remarked that there has been more activity with the State of New Mexico although efforts have been made with the State of Arizona.

Director Fulton stated that currently, Navajo Nation Law Enforcement and Navajo Nation Public Safety Programs service over eighty chapters with a total of 220 police officers. She noted that 120 of those officers are assigned to Arizona. She commented that out of the 250,000 calls for services on the Navajo Nation, 38,000 result in arrests. With only 103 bed spaces available, she noted that it is increasingly difficult to place these people in the jail system. She explained that approximately 1,000 of the 250,000 calls for services involve major crimes, such as homicides, child and sexual abuse and other serious crimes that are processed through the Federal Court System. She noted that there are 39 criminal investigators that respond and provide technical assistance and investigation on major crimes. Additionally, Navajo Nation Law Enforcement has a violent crimes task force agreement with the Federal Bureau of Investigations (FBI) and the US Attorney's Office, which allows the Navajo Nation Law Enforcement investigators the ability to be cross deputized as US Marshals and therefore do not have to wait for FBI agents at the crime scene to act.

Director Fulton explained that one of the ways Navajo Nation Law Enforcement has explored the problem of the high volume of calls is with a mutual aid agreement with the counties in both New Mexico and Arizona. As a result, in 1998 Navajo Nation Law Enforcement entered in its first cross deputization agreement with McKinley County, New Mexico. This agreement has not improved the relationship between McKinley County and the Navajo Nation because Navajo Nation Law Enforcement officers still have limited jurisdiction, even though the officers meet all New Mexico State standards. She noted that there is reluctance from the county law enforcement officers to use the Navajo Nation Law Enforcement forms, detention booking process or tribal courts. There has been an increase in the number of concerns and complaints filed with the Department of Justice regarding liability issues from individuals that were arrested by county law enforcement. These incidents are pending as potential law suits.

Director Fulton stated that there is a need for mutual aid agreements with counties in Arizona. She stated that communication with Sheriff Richardson from Coconino County has begun regarding the Antelope Point area. She stated that communication with Apache and Navajo Counties has been quiet. She stated that there has been an increase of requests for the temporary commissioning of officers and to have them present at more activities that are occurring in and around the Navajo Nation, such as at fairs and other events. She opined that there is no need for a cross commissioning agreement with Arizona because Navajo Nation Law Enforcement police officers are certified and commissioned by the State of Arizona and the Navajo Nation Law Enforcement Police Academy meets the Arizona Peace Officer Standards and Training (AZ POST) standards and have been certified by the State.

Director Fulton distributed a handout which included a copy of the Cross-Commission Agreement between the Navajo Nation and the McKinley County Sheriff's Office, New Mexico; a copy of the Navajo Nation Mutual Aid Agreement Draft, 2000 and a copy of the Memorandum of Understanding between the Navajo Nation and the Counties in Arizona Draft, February 2002 (Attachment B).

Director Fulton explained that Coconino, Navajo and Apache Counties returned these forms with their proposals that are being reviewed by the Navajo Department of Justice. She stated that the Department of Justice is concerned that the creation of these agreements may compromise the Navajo Nation's sovereignty.

Director Fulton stated that the relationship between the states and the Navajo Nation greatly effects law enforcement due to financial assistance from the States. She explained that New Mexico funds Navajo Nation Law Enforcement with \$600/police officer that is certified under New Mexico standards. This funding is used for a variety of law enforcement needs, such as equipment or training. Arizona does not fund any Navajo Nation Law Enforcement needs. She remarked Navajo Nation Law Enforcement would like to see similar support from Arizona, but realizes that this responsibility is being delegated to the counties. She noted that requests have been placed to the counties for assistance with autopsies, support with equipment and other needs, which have not been fulfilled. She stated that last year an initiative regarding death investigations was submitted to cover the costs of autopsies and external exams that are conducted on death cases that occur outside of hospitals in New Mexico. New Mexico passed legislation last year to fund \$50,000 per year for autopsies and external exams in Indian Country. She stated Navajo Nation Law Enforcement sought parity for this situation, as outside of Indian Country, all law enforcement agencies in the State of New Mexico are provided funds for autopsies and external examinations.

Director Fulton remarked that another area under review is the sharing of driving under the influence (DUI) information with Arizona. She stated that Navajo Nation Law Enforcement will be coming to the State to request that it be allowed to share its DUI data with the State to have another mechanism in place to address repeat DUI offenders. Currently, with Navajo Nation law and the current lack of bed space, Navajo Nation Law Enforcement can not address DUI cases in a way that it would like to. She opined that if Arizona were to enter into an agreement with Navajo Nation Law Enforcement to share this information, these offenders could be penalized in a different manner other than tribal jail time. She stated that Navajo Nation Law Enforcement is reviewing using a current agreement that is going through the process, where fingerprint data would also be shared with the State of Arizona. She stated that Navajo Nation Law Enforcement recently was awarded grant monies to establish the Arizona fingerprinting system within the Navajo Nation.

Director Fulton noted that still another area under review is to further the Navajo Nation's relationship and gain recognition of the police academy in Tseyi the State of Arizona. She stated that it is Navajo Nation Law Enforcement's hope that the academy would be recognized by the State as a northern Arizonan police academy rather than a Navajo Nation law enforcement academy, as it meets the State's standards and curriculum requirements.

In response to Representative Laughter, Director Fulton reiterated that the Department of Justice is concerned that the creation of cross commissioning agreements may compromise the Navajo Nation's sovereignty. She remarked that Navajo Nation Law

Enforcement would like to see Arizona's recommendations for guidelines for the creation of government-to-government agreements with the Arizona counties. She stated that protocols in these agreements need to be established to deal with controversial issues, such as the issuance of tickets to avoid problems.

Representative Laughter recommended that the Navajo Nation might submit its recommendations for the agreements based on agreements made with the New Mexico counties. She stated that by doing so, the Navajo Nation would retain its sovereignty and help facilitate the agreements being created with the Arizonan counties.

Representative Laughter asked if the main focus for wanting to establish the agreements is for Arizona to assist with funding. Director Fulton remarked that the agreements are not to obtain funding. She stated that a mutual aid agreement is to recognize that a relationship exists between the Navajo Nation and the State of Arizona and specifies under what circumstances and where county law enforcement officers would be called upon for assistance on the reservation to enhance Navajo Nation Law Enforcement. She stated that the funding received by New Mexico is a new issue and noted that Navajo Nation Law Enforcement has not requested any funding support from Arizona in the past.

Mr. Watchman opined that in the 1970s, out of necessity, it was recognized that there was a need for cross deputization in New Mexico. He opined that now in Arizona, the issue facing Navajo Nation Law Enforcement is the lack of uniformity between how the New Mexico counties and Arizona county law enforcement officers enforce county, state and Navajo law on reservations. He remarked the process itself is also an issue. Director Fulton stated Mr. Watchman's comments were correct.

Mr. Lee commented that this issue might be addressed with educating county law enforcement officers at the northern Arizonan police academy in Toyai.

Representative Laughter remarked that this might be best addressed in legislation. She asked if Senator Bennett would be in support of legislation to address this issue. Senator Bennett remarked that he would be in support of trying to pass legislation that would implement good ideas. He stated that one option is to make the Navajo Nation its own county, but noted that this may make other tribes want to become individual counties as well.

Mr. Watchman remarked that there is ambiguity with how county and state laws are enforced by Navajo Nation Law Enforcement and by county law enforcement officers.

Senator Rios commented that it was his understanding that these important issues of mutual concern, such as law enforcement, homeland security, water issues and other issues that lack clear definition, were to be addressed by the Committee by trying to create a piece of legislation that would authorize the Arizona Indian Commission, or some other entity to review. He remarked that entity would then report back to the Legislature to have legislation created to address these areas of concern.

Senator Bennett asked if Navajo Nation Law Enforcement officers are able to enforce Navajo Nation laws as well as State and county laws. Director Fulton stated that Navajo Nation Law Enforcement officers are encouraged to enforce Navajo Nation laws, however if the situation arises and the need exists for the use of State or Federal law, Navajo Nation Law Enforcement officers enforce them. She stated that it varies from incident to incident. She commented that Navajo Nation Law Enforcement would expect any law enforcement personnel or agency to respect the laws of the Navajo Nation and enforce the laws of the Navajo Nation.

Mr. Etcitty remarked that offenses committed on the reservation, the Navajo Nation, by its authority, is limited to dealing with misdemeanor offenses. When offenses are felonies, because it occurred on a reservation, federal law would prevail. He noted that in some instances, state governments might wish to be involved as well. He stated that these jurisdictional overlaps create a problem with uniformity. He stated that creating a protocol to address these situations is needed. He stated that cross deputizing allows for a state officer to enforce Navajo Nation law and Navajo Nation officers to enforce state law, but it does not outline which law should be used.

Representative Laughter commented that before a state and a tribe can reach an agreement, she opined that the tribe needs to create the perimeters of its preferences or recommendation. She stated that this would assist in the creation of uniformity. She opined that this topic needs further discussion and recommended that interested parties should meet outside of the Committee.

Director Fulton stated that this issue has become a sensitive issue for Navajo Nation Law Enforcement. She noted that Navajo Nation Law Enforcement has reached an impasse with the creation of an agreement between the counties of Arizona and the Navajo Nation. She stated that both sides have submitted their recommendations and there has been an expectation of negotiations since April 2002, when the Navajo Nation submitted their recommendations to the counties. She stated that Navajo Nation Law Enforcement is now waiting for negotiations to begin.

Senator Bennett excused himself from the meeting at 12:00 p.m. In response to Senator Jackson, he stated that he would support a recommendation to continue the Committee for several more years to continue studying this situation.

## **PRESENTATION OF DRAFT MODEL RELATIONSHIP**

Ron Lee, Arizona Commission on Indian Affairs (ACIA), distributed handouts entitled A Model for Building Tribal-State Relations, Arizona Indian Town hall Process and a copy of ARS §41-1108, House Engrossed Senate Bill 1113 and House Engrossed House Bill 2632 (Attachments C, D and E). He remarked that the Navajo Nation has the most established relationship with the State of any of the tribes, but noted that many tribes do not care to have any type of formalized relationship with the State. As a result, he opined that the Committee needs to be careful with creating a

definition of "a formal relationship" that would be different amongst the various tribes. He stated that since his appointment in 1988 to the ACIA, he has learned that some tribes want to remain autonomous and do not want the State to be involved in their affairs. The following are highlights from his slide presentation, A Model for Building Tribal-State Relations:

- Brief history of Tribal-State relations prior to 1999, mission and scope.
- Explanation of new vision, with the need to develop ongoing dialogue.

Outline of needed organizational development.

- New Town Hall Forum outline
- Explanation and outline of purpose and activities before, during and after the Town Hall Forum.
- Explanation of Indian Nations and Tribes Legislative Day, purpose and activities.
- Explanation of developing a cycle of ongoing activities and proposed legislative changes.
- Indian Nations Day and The Arizona Indian Town Hall Process – Executive Summary

**Representative Laughter moved that the Committee make a recommendation to introduce legislation to move the date of the Indian Nations and Tribal Legislative Day to the Thursday of the second week of session, per Ron Lee's recommendation. The motion CARRIED by voice vote.**

**Representative Laughter moved that the Committee make a recommendation to introduce legislation to add ARS §41-1108 back into the statute for Indian Nations and Tribal Legislative Day. The motion CARRIED by voice vote.**

**Representative Laughter moved that the Committee make a recommendation to introduce legislation to have an intern from each of the universities including an intern from any interested tribal organizations, college or university to report in the form of a thesis to the Legislature and to Indian Nations and Tribal Legislative Day.**

Representative O'Halleran remarked that in theory he did not have a problem with this recommendation, but he would be hesitant to move forward with the recommendation until the Committee has more information and discussion.



Mr. Lee commented that rather than having an intern from the universities, he would recommend having the Legislature hire an intern for the ACIA to perform research and track legislation.

Senator Rios explained the interns that are hired by the Legislature receive college credit for their intern service and are paid from the House and Senate budgets. He noted that other state agencies hire interns in a similar manner and pay the interns salaries from the agency's budgets. He opined that if the ACIA wants an intern for research purposes, the salary for the intern would need to come from the agency's budget, not from the Legislature's. He remarked that he would not be in support of Representative Laughter's motion.

**Representative Laughter withdrew her motion.**

## **REVIEW OF DRAFT COMMITTEE REPORT**

**Nadine Sapien, Senate Research Analyst**, distributed a handout entitled Draft, Joint Legislative Study Committee on the Relationship Between the State and the Navajo Nation, 2002, Final Report (Attachment F). She commented the recommendations that were voted on today would be included in the Draft of the final report.

Representative O'Halleran, referring to the Draft, commented that in the Committee charge it is stated that the Committee shall: (1) review the history of the formation of the Navajo Nation, including the status of the Navajo Nation at the time of statehood; (2) review the legal implications of the citizenship status of Navajo Nation members in relation to their tribe, the United States and this State; (3) review the legal implications of the Navajo Nation's sovereignty, including the issue of taxation and problems that have arisen when there have been differences between the laws or policies of this State, or a county, and the laws or policies of the Navajo Nation; (4) compile a list of State programs that provide services to tribal residents, including those services provided by the Department of Education and the Arizona Health Care Cost Containment System administration and study the manner in which those agencies coordinate with tribal governments in administering those programs; (5) determine which universities and community college districts provide courses on reservations and determine the manner in which tribal approval for those courses is obtained; and (6) evaluate the possible impact of making the Navajo Nation a separate county. The Committee shall make recommendations on the following: (1) statutory and administrative procedure changes to improve coordination between State, county and tribal governments in providing services to reservation residents; (2) methods to increase partnership efforts between the State, counties and Navajo Nation; (3) other methods to improve relationships between State, county and tribal governments. The Committee shall submit a written report on or before December 15, 2002, of its findings and recommendations to the Speaker of the House of Representatives, the President of the Senate and the Governor. The Committee shall provide a copy of its report to the Secretary of State and the Director of the Arizona State Library, Archives, and Public Records. He asked if the Committee has completed any of these tasks.

Ms. Sapien stated that not many of the Committee charge items have been addressed by the Committee.

Representative O'Halleran opined that it is important that the Committee follow the charge that was set forth and to deal with these issues in some way so that the Navajo Nation members and members of other tribes have an idea of how they can deal with the State. He stated that after reading the minutes of prior meetings, he did not feel that the Committee has fulfilled its charge.

Senator Jackson stated that a number of items on the Committee Charge were good ideas, but were hard to accomplish as it was very difficult to get a quorum. He stated that he attempted to obtain information from the Navajo people to ascertain if there was a need for a formal relationship. He opined that this has been established by the testimony given at the Committee meetings. He stated that he is satisfied with what the Committee has done so far.

#### **RECOMMENDATIONS REGARDING THE INTRODUCTION OF LEGISLATION TO CREATE A NEW STUDY COMMITTEE**

Representative O'Halleran recommended that one of the Committee's recommendations should be the continuance of the Committee to fulfill the Committee's obligations. He opined that it is important for the Legislative body to fully understand the programs that are provided to tribal residents so that it can know if the State is fulfilling its obligation to all of the citizens of the State.

**Representative O'Halleran moved that the Committee include in the final report a recommendation to introduce legislation to establish a new Study Committee for two years starting with the next legislative session of the relationship between the State and all the Native American tribes within the State. The motion CARRIED by voice vote.**

#### **ADOPT FINAL REPORT**

**Representative Laughter moved that the Committee ADOPT the final report and direct staff to include the Committee's approved recommendations. The motion CARRIED by voice vote.**

In response to Representative Laughter, Ms. Sapien explained that the Committee would be terminated as of December 31, 2002. She stated that should legislation be passed to establish a new study committee, the general effect date would be somewhere around August 2003, unless there was an emergency clause.

Senator Rios stated that an ad hoc committee could be formed to continue the Committee's work until a new study committee is established.

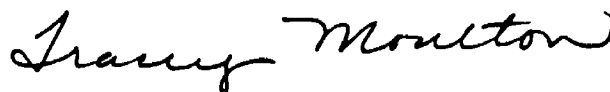
Representative O'Halleran stated that it is his intention to work with Representative Laughter and others to make sure that this work continues uninterrupted.

**RECOMMENDATIONS REGARDING THE SUBMISSION OF THE COMMITTEE'S  
FINAL REPORT TO THE NAVAJO NATION FOR REVIEW**

Senator Jackson stated that he recently spoke with the newly elected Navajo President and they agreed that the draft model relationship would need to be approved by the Navajo Nation. Senator Jackson instructed staff to forward the final report to the Navajo Nation for review.

Without objection, the meeting was adjourned at 12:50 p.m.

Respectfully submitted,

A handwritten signature in cursive script that reads "Tracey Moulton".

Tracey Moulton  
Committee Secretary

(Tapes and attachments on file in the Secretary of the Senate's Office/Resource Center, Room 115.)

Date: 11-21-2  
Time: 10:00 Am

MEETING OF COMMITTEE ON  
Joint Legislative Study Committee on the Relations  
Between the State and the Navajo Nation

[illegible]

**Attachment**